Raphael Lemkin and Genocide

If the history of the Western moral imagination is the story of an enduring and unending revolt against human cruelty, there are few more consequential figures than Raphael Lemkin and few whose achievements have been more totally ignored by the general public.

Lemkin coined the word "genocide." He was also its victim. Forty-nine members of his family, including his mother and father, were rounded up in eastern Poland and gassed in Treblinka in 1943. Lemkin escaped to America and in war-time Washington gave a name to Hitler's crimes in his monumental study of the jurisprudence of Nazi occupation, *Axis Rule in Occupied Europe*, published in 1944. He understood, earlier than almost anybody, that genocide was the darker purpose of

Hitler's war: "genocide is a new technique of occupation aimed at winning the peace even though the war itself is lost."

After the war, thanks largely to his efforts, the UN approved the Genocide Convention and thanks to his crusade, by the early 1950's sufficient states had ratified the convention for it to enter into force. He never lived to see a conviction for the crime he was the first to name.

His campaign to promote the convention became an all-consuming obsession: he left adjunct posts at Yale and New York University, neglected himself, forgot to pay his rent, was evicted, went without food while spending all his days lobbying, cajoling, brow-beating diplomats, politicians, public figures and newspapermen about genocide. Unfinished fragments of autobiography poignantly document his decline:

"As I am devoting all my time to the Genocide Convention,
I have no time to take a paying job, and consequently
suffer fierce privations. . . . Poverty and starvation. My
health deteriorates. Living in hotels and furnished rooms.

Destruction of my clothes. Increased number of
ratifications. . . . The labors of Sisyphus. I work in
isolation, which protects me. . ."

He collapsed at a bus stop on 42nd street in New York in August 1959 and died at the age of 59, friendless, penniless and alone, leaving behind a bare rented room, some clothes and a chaos of unsorted papers.

Donna-Lee Frieze, an Australian academic, spent four years in The New York Public Library, where the Lemkin material is deposited, reading faded typescripts, collating different drafts, deciphering illegible scribbles in ink and occasionally filling in gaps between or within sentences.

Now his autobiography has been published under Lemkin's chosen title, *Totally Unofficial*, a phrase from a *New York Times* editorial that praised him for what made his campaign unique: he did it purely as a private citizen, without foundation, academic or institutional support of any kind.

Lemkin belongs historically to a select list of humanitarians like Henri Dunant, who founded the Red Cross in 1863 and Eglantyne Jebb who created Save the Children after World War I, or going further back, to John Howard, the 18th century sheriff of Bedfordshire who single-handedly awoke Europeans to the cruelty of their prison systems. These were all people who single-handedly changed the moral climate of their times by obsessional devotion to a private cause. Unlike Dunant ,the wealthy son of Swiss merchants and Jebb, gifted daughter of a distinguished English landed family, Lemkin achieved what he

did without the backing of private wealth: he was a penniless Polish refugee in America.

Donna-Lee Frieze has performed a labor of love with the materials Lemkin left behind but her best efforts cannot manage to turn the fragments into a complete and coherent book. Important chunks of the narrative are missing. We can only guess why Lemkin omitted to discuss his life between 1943 and 1945 when he worked in the Board of Economic Warfare in Washington and wrote Axis Rule in Occupied Europe, his unique study of the jurisprudence of genocide. Similarly missing is any treatment of his successful attempt to get genocide included in the official indictment of the Nazi war criminals at Nuremberg in 1945. Lemkin consigns these achievements to silence, leaving us to ponder his deeper motivations.

The final decline of lonely men is often a chronicle of self-delusion, persecution mania and paranoia. Lemkin's final years had its share of this, but it is also marked by aching awareness of the damage he was doing to himself. He appears to be one of Kafka's 'hunger artists', those moving, self-punishing creatures who cut themselves off from the world, preyed upon by a guilt they cannot name, who make their misery into their life's work. In some deep sense, Lemkin chose his own destruction and refused consolations that less complex characters would have easily embraced.

In his strangely lucid refusal of available consolations of career and company, he recalls another hunger artist of the same period, the young French philosopher Simone Weil. She starved herself so as not to eat more than the citizens of occupied Europe and died of tuberculosis at the age of 34 in a sanatorium in England in 1943, after completing what she

called her 'war work' for the free French, a transcendent Declaration of the Duties of Mankind. ¹

Other pioneers in the battle to rebuild the European conscience after World War II—Rene Cassin who helped draft Universal Declaration of Human the Rights or Hersh Lauterpacht, who wrote the first treatise calling for an enforceable international convention on human rights—would have regarded these Jewish hunger artists with baffled pity. Cassin, from an assimilated and republican Jewish family in the south of France, joined De Gaulle's free French in London like Weil, but unlike her, never took it upon himself to suffer for others. Cassin went on to help draft the UN Declaration of Human Rights, and served as a judge on the European Court of Human Rights. He won the Nobel Prize for his work in 1968. Lauterpacht, a Polish Jew from the same region of eastern

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¹ Simone Weil The Need for Roots: Prelude to a Declaration of the Duties of Mankind, (L'Enracinement), London, Routledge, 1952

Poland as Lemkin, left before the killing began in the early 1920's went to England and enjoyed a triumphant academic career, culminating in his appointment as Whewell Professor of Law at Cambridge and a term on the International Court of Justice. Like Lemkin, Lauterpacht watched helplessly from abroad as his entire Jewish family was destroyed in the Holocaust. Like Lemkin played an important role in the Nuremberg trials. Unlike Lemkin, he did not rage Nuremberg's limitations and proved capable of working in a team, helping to write the briefs that Hartley Shawcross, the British prosecutor at the Nuremberg Tribunals, used to frame the indictment against the Nazi war criminals. ²

As the Yale historian Jay Winter has argued in a fine recent study, both Cassin and Lauterpacht were Jewish insiders, while Lemkin remained an outsider, unmarried, untenured,

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² See A.F. Vrdolak "Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law", EJIL (2009), 20,4,1163-1194

unattached and ultimately alone. ³ His work on genocide finally became a trap from which he could not—and in the end did not wish--to escape.

His autobiography resists easy explanations as to why this should have been so. All one can see clearly is that he had a perverse genius for steering away from available safe harbors. He was a Jew who resisted full identification with his people, so he was never a part of any of the Jewish communities or organizations who might have taken him in; he was a proud Pole who kept apart from Polish communities in the United States; a legal scholar, too grimly obsessed with genocide to settle down with a stable academic career, though several beckoned, at Yale and at New York University; he was a human rights pioneer who quarreled with human rights advocates; he was a man who longed for company, but had no time for small

³ Jay Winter, Antoine Prost <u>Rene Cassin and Human Rights: From the Great War to the Universal Declaration</u> (Cambridge, 2013); also "Prophet Without Honors" The Chronicle Review, June 3, 2013

talk; a man who, as he ruefully confessed, always wanted to avoid three things in life—"to wear eye glasses, to lose my hair and to become a refugee." Now all three things, he said, "had come to me in implacable succession."

From earliest childhood in Poland, he admitted to a peculiar fascination with tales of horror—the savagery of the Mongols, the cannibalistic rituals of primitive tribes, the brutal punishment Romans meted out to slave revolts. This obsession with human cruelty gave him the *raison d'etre* of his life but it could only have deepened his crippling isolation.

One of the weirder and more poignant moments in his autobiography occurs when he meets a diminutive Chilean dancer in a half empty ballroom of the Casino in Montreux, Switzerland in 1948, while he was working on the Genocide Convention. After dancing with her ("she danced with an

exquisite slant, her eyes half closed") he spent the night bizarrely regaling her with gruesome stories of the cruelties meted out by the Spaniards to her Aztec ancestors.

This was a pattern. Potential friends drew away from him because his normal conversation was apt to dwell at unsavory length on horrible punishments and excruciating cruelties. He was a man who couldn't stop telling strangers his nightmares. He devoted every spare minute of his final years to a world history of genocide. This project, mad in its Borgesian determination to create a total encyclopedia of world cruelty, lay unfinished at his death.

It would be easy to turn aside from Lemkin's obsessions or dismiss them as sado-masochistic, were they not paired with a redeeming belief that fate had chosen him to save future generations from the genocidal furies that had claimed his own family.

The question that the autobiography raises but leaves unanswered is how he chose for himself the role of hunger Extreme moral careers often have aesthetic roots: artist. people choose their lives as dramatic acts of self-creation. There is something childlike, and also as unyielding as a child's desire, in Lemkin's self-dramatization. From an early age, he imagined himself as a hero in the popular turn of the century romantic novel, *Quo Vadis*, with its kitsch world of noble slaves and lasciviously corrupted Roman owners. At the height of his influence right after World War II, he struck the disabused and cynical diplomats at the UN as "an agreeable fanatic" but by the end of his life, his self-dramatization was a crippling caricature of lonely defiance, surrounded by imagined enemies bent on his humiliation and defeat.

Totally Unofficial, which he wrote in these final years, offered him an escape backward into his past. It is at its most alive when he evokes his childhood in the Jewish world of Eastern Europe before World War I. He was not from a *stetl* family or an Orthodox one, and while he went to Hebrew school, his culture was always Polish and Russian as well as Jewish, which helps to explain why, in his writings on genocide, he never isolated the Jews from the fate of others, insisting that the Nazis were as bent on the destruction of the Polish nation, as they were on the extermination of his own people.

His self-identification as a Jew was always relatively weak, and his objective was never to save the Jewish people from genocide but mankind as a whole. This is why, when other Jews who survived the Holocaust became Zionists and put their faith in a defensible state of their own, Lemkin put his faith

instead in international law and a convention that would proscribe the crime forever for every victim group.

This does not mean he was not shaped, through and through, by Jewish fate, in his case, by the glory and the burden of being born a Jew in what the historian Timothy Snyder has taught us to call the Bloodlands, the killing fields of Byelorussia, Lithuania and eastern Poland. When Lemkin was born in 1900, these lands were the Pale of Settlement and under the rule of the Russian Czar. Jews were forbidden to own or farm land, to study in Russian cities or to trade in alcohol. Lemkin's father persisted as a small-holding farmer nonetheless and Lemkin remembered when the local Russian policeman arrived at the house on horseback, tied his horse to a tree and waited until Lemkin's mother and father came up with the bribe that would make him go away again.

When Lemkin was six, pogroms broke out in Bialystok, three miles away. While his family was never in danger, Lemkin remembered being told that the anti-Semitic mobs slit open the stomachs of some of their victims and stuffed them with feathers from pillows seized from their bedding.

From early in childhood, Lemkin learned to think of history as a bleak tale of torture and suffering. He writes, "a line, red with blood, led from the Roman arena through the gallows of France to the pogrom of Bialystok." Again, instead of seeing Jews as exemplary or unique victims of genocide, he placed their fate in the context of an unending cycle of human cruelty that was his mission to name and eradicate. So compelling was this mission that he was willing to endure almost any ridicule to accomplish it.

As a young law student in Germany in the 20's, his heroes were two moral assassins. The first was the young Armenian who gunned down in the streets of Berlin one of the Turkish pashas responsible for the Armenian massacres. The young Lemkin thrilled to the assassin's reported remark, as he watched his victim fall: 'This is for my mother." The second assassin that kindled Lemkin's imagination was a Jewish tailor, Shalom Schwarzband, who also used a pistol, this time in the streets of Paris, to gun down Symon Petliura, a Ukrainian minister of war, whom he held responsible for the pogroms in the Ukraine that claimed the life of Schwarzband's parents. Both assassins were arrested, went to trial and were acquitted on grounds of insanity. Lemkin, still a student, wrote an article for a Polish magazine calling Schwarzband's act 'a beautiful crime.' The word beautiful tells us how strongly Lemkin's imagination was shaped by a romantic aesthetic of vengeance.

Vengeance contended with the law in the young lawyer's imagination, but the law finally won. Like the other young Jewish lawyers, Cassin and Lauterpacht, who came out of World War I determined to rein in the murderous propensities of the nation state, Lemkin held fast to a faith in international law that the brutal advance of Nazism and Communist dictatorship did nothing to dispel. He put his faith, first of all, in the League of Nations and the League's minority rights regimes. As Mark Mazower has shown, these were pioneering first attempts to ensure that national minorities in Eastern Europe would not fall prey to the vengeance of newly selfdetermining national majorities.4

The minority rights framework decisively shaped Lemkin's approach to genocide. Unlike Lauterpacht who came to see the individual as the primary subject requiring protection in

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⁴ Mark Mazower "The Strange Triumph of Human Rights, 1933-1950", <u>Historical Journal (</u>2004), 47,2,379-398

international law, Lemkin remained wedded to the older League idea that it was groups who required protection from the murdering state. For Lemkin, the religious, ethnic and national group was the bearer of an individual's language, culture and self-understanding. To destroy the group was to destroy the individual. This vision helps to explain his otherwise inexplicable hostility to human rights, indeed his belief that Cassin's Universal Declaration, passed in the same year as the Genocide Convention, offered no protection against genocide.

Back in Warsaw in the 1920's after studies abroad, now working as a public prosecutor and building a prosperous private practice, Lemkin began to seek a role for himself beyond the confines of Poland. In 1933, working through the institutions of the League of Nations Lemkin, then in his early 30's, proposed the adoption of two new international crimes of

war —barbarity and vandalism—the destruction of collective groups and the destruction of cultural heritage. This contained the kernel of his vision of genocide.

He was just about to present these new ideas in person at a conference in Madrid when his proposals were denounced in a Polish paper for protecting Jews only and hence as unPolish. The head of the Polish delegation, Emil Rappoport, later a long-serving judge in Communist Poland, decided Lemkin should withdraw. This experience of anti-Semitism often sundered Jews' connection to their place of birth, but not in Lemkin's case. He always saw himself as a Pole, one reason, perhaps why today, at least since 2005, there is a plaque commemorating him on the site where his house once stood in Warsaw.

That house was bombed and destroyed when Germany declared war and invaded Poland in September 1939. The

most vivid chapters of his autobiography describe the incredible odyssey of his escape. He survived a German divebombing attack on the train carrying him out of Warsaw and after eluding capture by the Russians, who invaded from the east, made his way on foot, along with thousands of other refugees, back to the still untouched Jewish villages of eastern Poland. There for a few nights he lodged with a young Jewish baker and his family. Not for the first time, Lemkin was tormented by his inability to shake his own people awake to the dangers that lay in store for them. He asked the young baker whether he had heard of Hitler's *Mein Kampf*. Did he not know that Hitler had boasted he would kill the Jews like rats? The baker replied:

"How can Hitler destroy the Jews if he must trade with them?"

The baker had been under German occupation during the first war, in 1915. "I sold bread to the Germans; we baked for

them from their flour. We Jews are an eternal people. We cannot be destroyed. We can only suffer."

Lemkin sat with the baker's family through their Sabbath meal, that autumn night in 1939, watched the baker's wife with her "air of solemnity, self-assurance and discreet kindliness" light the candles and joined them in the prayers, the deep serenity and dignity of the occasion shadowed by his own premonitory dread. Later that night, he heard the baker praying by himself in the next room, "a crescendo of persuasion, solicitation, a delicate murmur of explanation." From the next room, Lemkin listened to a dialogue with God, based in a covenant of deepest faith.

Next morning, however, the baker's son, a youth of about twenty, said bitterly that his parents' faith was inexplicable to him. "They would all make marvelous corpses: disciplined, obedient, they would all move like one and die silently, in order and solemnity."

It was only in 1945 at Nuremberg that Lemkin established for certain what had happened to his own family and to the baker's. There among the thousands of witness affidavits prepared for the trial of the Nazi war criminals, he found the one that described the final moments of the baker, his family and their village in 1942:

Without screaming or crying, these people undressed, stood around by families, kissed each other, said farewells and waited for the command of {the} SS Man who stood near the excavation [pit] with a whip in his hand...

Unable to rouse the baker to the danger ahead, unable even to persuade his own mother and father to leave their homes, Lemkin escaped to unoccupied Lithuania and then to Riga in Latvia. There he met the great historian of eastern European Jewry, Simon Dubnow. Two years later, Dubnow would be led to his death in the dark forests outside of Riga. His last words were "Write it down! Write it down!"

From Riga, Lemkin secured an exit visa and flew to Stockholm where scholars he had met in international law conferences in the 1930's, gave him refuge and work at the university. There he persuaded officials in the Swedish government to get their consulates and businesses across Europe to send back the regulations, decrees and laws the Nazis were promulgating throughout their zones of occupation. Studying them in the Stockholm university library, Lemkin became almost the first legal scholar in safety abroad to detect the exterminatory logic behind Nazi jurisprudence: the dismissal of non-Aryans from all posts in occupied countries, the proscription of inter-racial

marriage, the systematic destruction of Polish religious, cultural and social institutions, the proscription of the Jews, the regime of the yellow star, the creation of ghettos in Warsaw, Amsterdam and Lodz.

Believing he could only communicate what he had learned, if he could get himself to the United States, Lemkin contacted Malcolm McDermott, a Duke University law professor who had visited Lemkin in Warsaw and had helped him translate and publish an English version of the Polish penal code. McDermott arranged an appointment for Lemkin at Duke, and armed with this letter, Lemkin secured a US visa. Even now Duke University, to judge by a recent visit of mine, seems barely aware of its historic role in enabling Lemkin's escape.

Lemkin's only available route to the US took him by plane from Stockholm to Moscow, then across Siberia by rail to

Vladivostok, then by boat to Japan, followed by a Pacific crossing to Vancouver and Seattle, followed by a train journey that ended finally at Duke Station in Durham North Carolina in April 1941.

When McDermott met him and drove him around the city of Durham, "a lively bustling city smelling of tobacco and human perspiration, "full of people waving greetings to each other ("Hiya John," "Hey Jack",) the exhausted Polish refugee could only burst into tears.

The America of spring and summer 1941 was still neutral, still observing the Nazi occupation of Europe from a safe distance. McDermott paraded Lemkin to audiences throughout North Carolina and neighboring states and everywhere he encountered genial, kindly incomprehension when he talked about the exterminatory intentions of the German regime.

This remained the case even after June 1941 when the Germans invaded Russia and the SS and their killing units began to scythe through the Jewish communities of eastern Poland. It was at Duke Station that he received a final letter from his parents, written on a scrap of paper inside a battered envelope, saying only "We are well and happy that the letter will find you in America." He dreamed of his mother—her eyes smiling through a mist of sorrow—and understood that his parents were doomed. Driving to yet another Chamber of Commerce talk in the byways of North Carolina, he shook his fist at the windscreen in helpless rage. He was, he wrote,

"ashamed of my helplessness. . . .a shame that has not left me to this day. Guilt without guilt is more destructive to us than justified guilt, because in the first case catharsis is impossible."

'Guilt without guilt' this phrase comes as close as the autobiography ever gets to explaining the self-lacerating obsession that gripped Lemkin until the end.

When American did enter the war after December 1941, he left Duke and went up to Washington to work in the Bureau of Economic Warfare. Even his boss, Colonel Archibald King, had trouble grasping that the German occupiers were not observing the 1907 Hague Regulations on Land Warfare. "This is completely new to our constitutional thinking," King said, when Lemkin tried to lay out Hitler's philosophy of occupation.

Lemkin wrote President Roosevelt urging him to issue a public condemnation of genocide in occupied Europe, but he hit the same wall of incomprehension that Jan Karski, the envoy from the Polish underground, encountered when he met the President at the White House in 1943, and later Felix

Frankfurter at the Supreme Court. It was Frankfurter who later said of his meeting with Karski, "I did not say he was lying. I said I couldn't believe him."

Lemkin was certainly the one person in Washington in 1943 who could have believed Karski, but the two Poles never met. Unable to secure a hearing in official Washington, Lemkin persuaded the Carnegie Endowment for International Peace to fund and publish in late 1944 the work he had begun in Sweden on the law of occupation under Nazi rule. It was in this work that he gave what Winston Churchill had called a 'crime without a name' the name by which it has been known ever since.

A frenetic, increasingly compulsive decade of activity followed, as Lemkin crisscrossed the Atlantic, successfully arguing for the inclusion of the word—genocide-- in the Nuremberg

indictments, and then campaigning in Paris, London, New York and Washington for the passage of the Genocide Convention. He took up residence in the corridors of the UN, camping out in delegates' lounge, a lonely, balding refugee with an overstuffed briefcase, a fanatical mastery of ever comma in the convention draft and so obsessively focused on genocide that diplomats came to dread his approach.

It is typical of Lemkin's method that one decisive breakthrough in his campaign occurred at one in the morning in a Geneva park when, unable to sleep, he accosted another insomniac, who happened to be the Canadian Ambassador, and persuaded him to arrange an appointment for Lemkin with the Australian President of the General Assembly in order to place the Genocide Convention on the UN's agenda. This was how he worked cadging meetings and cajoling the powerful until finally on December 10, 1948, the UN General Assembly, then

meeting in Paris, passed the Convention. Instead of celebrating, Lemkin checked himself into a Paris hospital, suffering from exhaustion.

In retrospect, what seems extraordinary is that foreign ministers, diplomats and statesmen were willing to listen to He benefited from a very brief window of him at all. opportunity, when utopian plans for global order and global justice could get a hearing, when the war-time unity of the victorious allies had not yet collapsed into the acrimony of the Cold War. By 1948, the tide of commitment to justice for Nazi war crimes was ebbing. The British were already objecting to Genocide Convention on the grounds that, surely, the Nuremberg was enough. The Russians were becoming adamantly opposed to any inclusion of 'political groups' in the definition of genocide's victims. The Cold War was squeezing shut the narrow space in which the victorious super-powers

could co-operate on projects of international legal reconstruction. By 1949, the UN Charter, the Universal Declaration of Human Rights, the Geneva Conventions and the Genocide Convention—the four basic pillars of the post-war legal order—had been erected. Lemkin could justly claim to have been responsible for one of them.

For the remainder of his life, he defended his definition of genocide against all comers, while extending it to cases, like the organized famine of the Ukrainian peasants, the Holodomor, that in those days were still awaiting recognition as genocidal crimes.

He was always indignant that genocide was associated solely with physical extermination, in whole or part of a group. He always believed that genocide could take non-exterminatory forms, as in the determined attempt he had seen in his native

Poland to crush Polish language, culture and faith and turn a people into slaves.⁵ That for him qualified as an attempt at genocide.

He would have been astonished and indignant at the after-life of his word, how, for example, victim groups of all kinds have pressed it into service to validate their victimization and how powerful states have eschewed the word lest it entrain an obligation to act. The most shameful example of this came in 1994 when US authorities refused to use it during the killings in Rwanda in 1994 lest it trigger a legal obligation to intervene. He would have been dismayed that it took until Rwanda for an international tribunal to secure the first conviction under his convention.

 $^{^5}$ Dirk Moses "Raphael Lemkin, Culture and the Concept of Genocide", $\underline{ http://fds.oup.com/www.oup.com/pdf/13/9780199232116.pdf}$

We can only hope that his deepest conviction—that genocide ran like a red thread through human history, past, present and future—is wrong. Hitler's dark appeal, Stalin's too, as well as the Khmer Rouge killers of Cambodia and the genocidaires of Rwanda, lay in offering their people a final solution: a world without enemies. Genocide is not murderous madness, but a politics that promises a utopia beyond politics: one people, one land, one truth. 6 Because genocide is a political utopia, it remains an enduring temptation in any society that resembles the Bloodlands of eastern Europe, those dark places where political authority will not allow minorities to live together without discrimination and hatred.

Lemkin did not live to see that the solution to genocide is not a convention in international law or a change in the dark hearts of men, but something simpler and easier to attain: democracy

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⁶ On genocide as a utopia, see my "Lemkin's Word", New Republic, 21 February 2001

and freedom. Free societies, ones that allow differences to speak and be heard, that live by intermarriage, commerce, free migration, democratic societies that convert enemies into adversaries and reconcile differences without resort to violence are societies in which the genocidal temptation is inconceivable.

The red thread can be snapped. We can awake from nightmare. We are not compelled to repeat and we are not required to become angels. We are simply required to live and let live, to embrace the minority competition of free societies. The solution to genocide lay closer to Lemkin than he ever realized: in the teeming streets of New York where he collapsed and died, in the wild and exuberant jostling of peoples and races that within several generations beyond his death became the new world we now take for granted.

The last word about him should be left to one of the minor characters in his autobiography, a person with walk on part who ends up haunting the story. It is the Chilean dancer at the Montreux Casino, who danced with him, with her eyes slanted, and then listened to him at the bar for hours afterwards as he shared his nightmares and his vision. When he finally stopped, she had one question: "Do you really hope to stop this slaughter?" When he said he did, she looked at him strangely, "like someone who was reaching into the beyond and said distinctly, "You will be a famous man after your death." Now at last, perhaps, the dancer's prediction will come true.